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October 5, 2007

FILED/ACCEPTED
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Federal Communications Commission
Office of the Secretary

VIA HAND DELIVERY

REDACTED – FOR PUBLIC INSPECTION

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 Twelfth Street S.W.
Washington, D.C. 20554

Re: WC Docket No. 06-172: In the Matter of the Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas

Dear Ms. Dortch:

Covad Communications Group, NuVox Communications and XO Communications, LLC (the "CLEC Parties"), through counsel, submit for filing in the above-referenced proceeding the following documents of record before the Commission in the *Matter of Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control* (WC Docket No. 05-75).

- Letter from Thomas Cohen, Kelley Drye & Warren LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (enclosing Wholesale Communications Strategies, The Yankee Group, prepared for XO Communications, January 2004 , pp. 1-13, 31) (Sept. 21, 2005).

- Letter from Brad E. Mutschelknaus, Kelley Drye & Warren LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 22, 2005).

- Letter from Thomas Cohen, Kelley Drye & Warren LLP to Marlene Dortch, Secretary, Federal Communications Commission (enclosing HIGHLY CONFIDENTIAL materials

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requested by Commission Staff on pricing of wholesale services by MCI and Verizon) (Oct. 17, 2005).[1]

- Letter from Brad Letter from Brad E. Mutschelknaus, Kelley Drye & Warren LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 18, 2005).

These prior filings by the CLEC Parties demonstrate that the merger of Verizon Communications Inc. ("Verizon") and MCI, Inc. ("MCI") eliminated from the market for wholesale services the largest source of actual and potential competition to special access services offered by Verizon. Therefore, as forecasted by the CLEC Parties, the Verizon/MCI mega-merger removed downward pressure on the pricing of Verizon's special access services, and in turn, caused declining rates to stabilize, or even to increase.

The record before the Commission in *Matter of Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control* reveals that MCI was the most formidable, if not the only competitor to Verizon within the market for wholesale services pre-merger. Of particular importance, MCI's wholesale service offerings undercut Verizon's pricing of special access services up to eighty percent (80%),[2] exerting significant downward pressure on Verizon's pricing of special access services.[3]

By acquiring MCI, Verizon eliminated the largest source of competition to its special access services, and seized control of eighty-five percent (85%) of the market for wholesale metro private

1 Please note, this document is redacted for public inspection, pursuant to the Second Protective Order in the above-referenced proceeding. As required by the Second Protective Order, unredacted copies of this document also have been filed with the Commission Secretary, and submitted to Gary Remondino of the Wireline Competition Bureau, under separate cover. *See In the Matter of the Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Order, DA 07-208 (rel Jan. 25, 2007).

2 Letter from Brad Letter from Brad E. Mutschelknaus, Kelley Drye & Warren LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 18, 2005) at 1. *See also*, Letter from Thomas Cohen, Kelley Drye & Warren LLP to Marlene Dortch, Secretary, Federal Communications Commission (enclosing HIGHLY CONFIDENTIAL materials requested by Commission Staff on pricing of wholesale services by MCI and Verizon) (Oct. 17, 2005).

3 Letter from Brad E. Mutschelknaus, Kelley Drye & Warren LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 22, 2005) at 2.

line services within its operating region.[4] Moreover, as the CLEC Parties forecasted, no other source of meaningful competition has emerged post-merger.[5] By effectively removing wholesale competition by MCI from the market, downward pressure on Verizon's pricing of special access services has been relieved, and once declining rates for Verizon's special access services have stabilized.[6] This situation likely is to only worsen, when the merger conditions that require Verizon to temporarily maintain certain legacy MCI wholesale special access pricing expire next summer. Thus, the merger of Verizon and MCI, and the corresponding merger of AT&T Corp. and SBC Communications Inc., have eliminated the primary sources of actual and potential competition to the special access services provided by the Regional Bell Operating Companies ("RBOCs"), making it unrealistic to expect that market forces will constrain pricing of special access services by the incumbent LECs in the foreseeable future.

Respectfully submitted,

Brad E. Mutschelknaus

cc: Daniel Gonzalez
Ian Dillner
Scott Deutchman
Scott Bergmann
Chris Moore
John Hunter
Dana Shaffer

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4 Letter from Thomas Cohen, Kelley Drye & Warren LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (enclosing Wholesale Communications Strategies, The Yankee Group, prepared for XO Communications, January 2004 , pp. 1-13, 31) (Sept. 21, 2005), Attachment at 13.

5 *See supra* n. 3.

6 *U.S. v. SBC Communications, Inc. and AT&T Corp.*, Civil Action No. 1:05CV02102 (EGS); *U.S. v. Verizon Communications, Inc. and MCI, Inc.*, Civil Action No. 1:05CV02103 (EGS) (consolidated), ActTel's Reply Memorandum in Opposition to the United States' Motion for Entry of Final Judgments (filed Jun. 6, 2006) at 17-19 (and associated Exhibit).

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Federal Communications Commission
Office of the Secretary

September 21, 2005

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 – 12th Street, SW
Washington, DC 20554

Re: SBC/AT&T Application – WC Docket No. 05-65; Verizon/MCI Application – WC Docket No. 05-75

Dear Ms. Dortch:

Throughout the Commission's proceedings to review the proposed mergers of SBC/AT&T and Verizon/MCI, the Applicants have contended that AT&T and MCI are not major suppliers of wholesale loop and transport circuits in the local market. XO Communications and other local competitive providers have strenuously disputed this contention and have submitted extensive data based on actual market bids and agreements to the Department of Justice pursuant to Civil Investigative Demands demonstrating unequivocally that AT&T and MCI are the two leaders among competitive providers offering local wholesale circuits and these data provide elaborate detail on the prices offered by these two companies and their overall competitive effect on the market. XO urges the Commission to go the Department of Justice to review these submissions and, as already orally indicated to the Commission staff, it will provide the necessary waiver to facilitate this. In the meantime, XO is submitting portions of a survey and research report prepared for it by The Yankee Group on Wholesale Communications Strategies that supports XO's claim that about the substantial competitive presence of AT&T and MCI in the local wholesale market.

The January, 2004 survey and research report by the Yankee Group is based on overall market data and interviews with wholesale buyers in the U.S. in the third quarter of 2003 about their purchases in various market segments, including local private line – which is the service purchased by the largest percentage of respondents. In this local private line market, which had addressable revenues of approximately $13B in 2003 and is expected to grow between 4%-5% per year, the survey and report concludes that **other than the RBOCs, MCI has the largest market share of the wholesale metro private line market in the U.S. (10%) and AT&T has the second largest share (9%). This means that AT&T and MCI each have revenues in excess of $1B for these markets – which is far from the insignificant sum alleged by the Applicants.** It also is critical to note that AT&T's and MCI's competitive presence is even greater than these market shares indicated because they offer these wholesale circuits in the very areas where the under the rule adopted in the Triennial Review Remand Order loop and transport UNEs are delisted. The survey and report then states, "RBOCs dominate metro private line, as expected. Tier 1 metros experience enormous competition, however." As indicated above – and as demonstrated by evidence submitted by XO and others – this competition comes principally from AT&T and MCI, and this is the very competition that will be lost if these mergers are approved by the Commission.

If the FCC permits the largest incumbent local exchange carriers – SBC and Verizon – to merge with their principal and significant competitors in the local wholesale market, customers are certain to suffer dramatically. The Commission has an obligation because of these circumstances to reject the proposed mergers. If it determines there are conditions that might alleviate these harms, it then must find they are sufficiently stringent and enforceable to ensure that customers find themselves in the same competitive position after the mergers as before.

Sincerely,

Thomas Cohen

Thomas W. Cohen
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1200 19th Street. NW – Ste. 500
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Counsel for:

XO COMMUNICATIONS

Enclosure: Wholesale Communications Strategies, The Yankee Group, Prepared for XO Communications, January, 2004, pp. 1-13, 31

cc: Chairman Kevin Martin
Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Daniel Gonzalez
Michelle Carey
Russ Hanser
Jessica Rosenworcel

Scott Bergmann
Sam Feder
Thomas Navin
Jonathan Levy
Julie Veach
Bill Dever
Marcus Maher
Don Stockdale
Gail Cohen

Wholesale Communications Strategy Session:

Survey Results and Research Overview

Prepared for XO Communications

January, 2004

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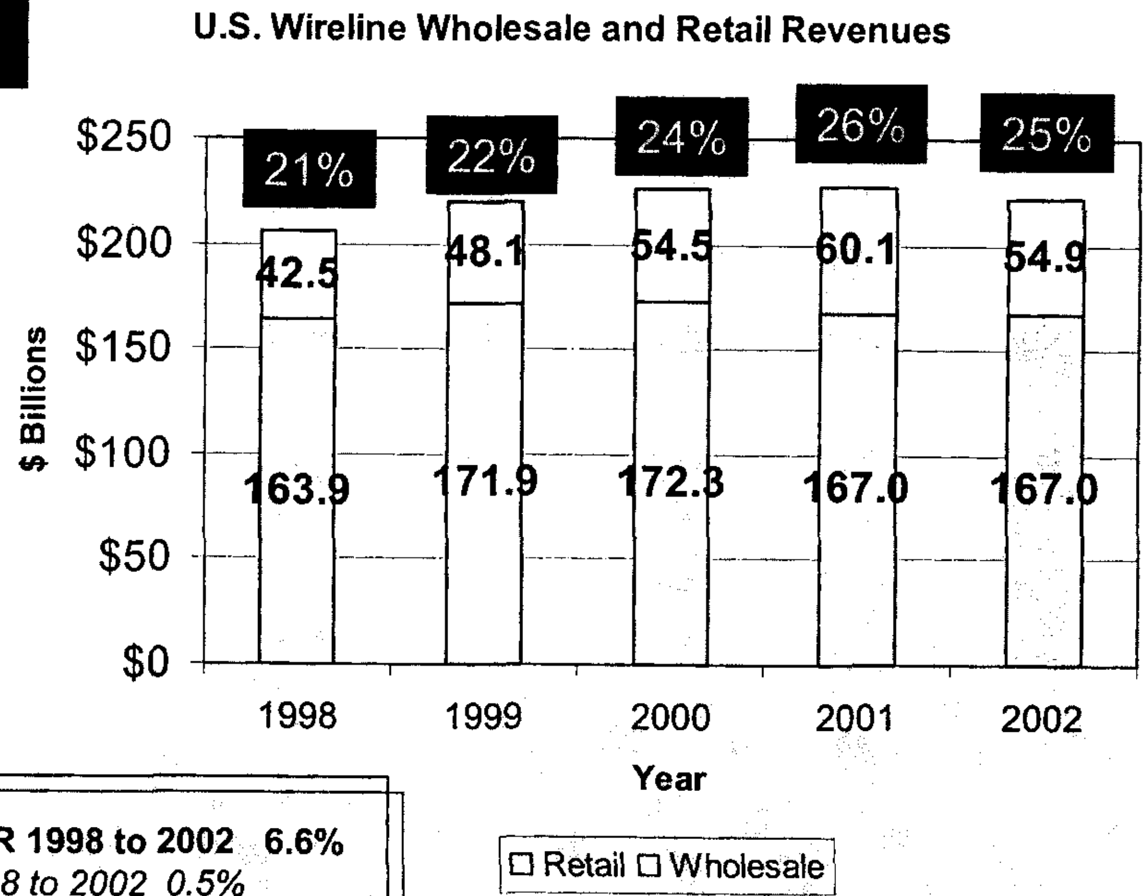
Wholesale Communications Strategies
The Yankee Group

Agenda

- **Wholesale Communications Services Introduction**
- **Survey Results and Analysis**
- **Supply Side Research**
- **Recommendations for XO Communications**
- **Future Survey Initiatives**

Wholesale revenue forms a large share of the overall U.S. telecommunications services market

% of Wireline Market

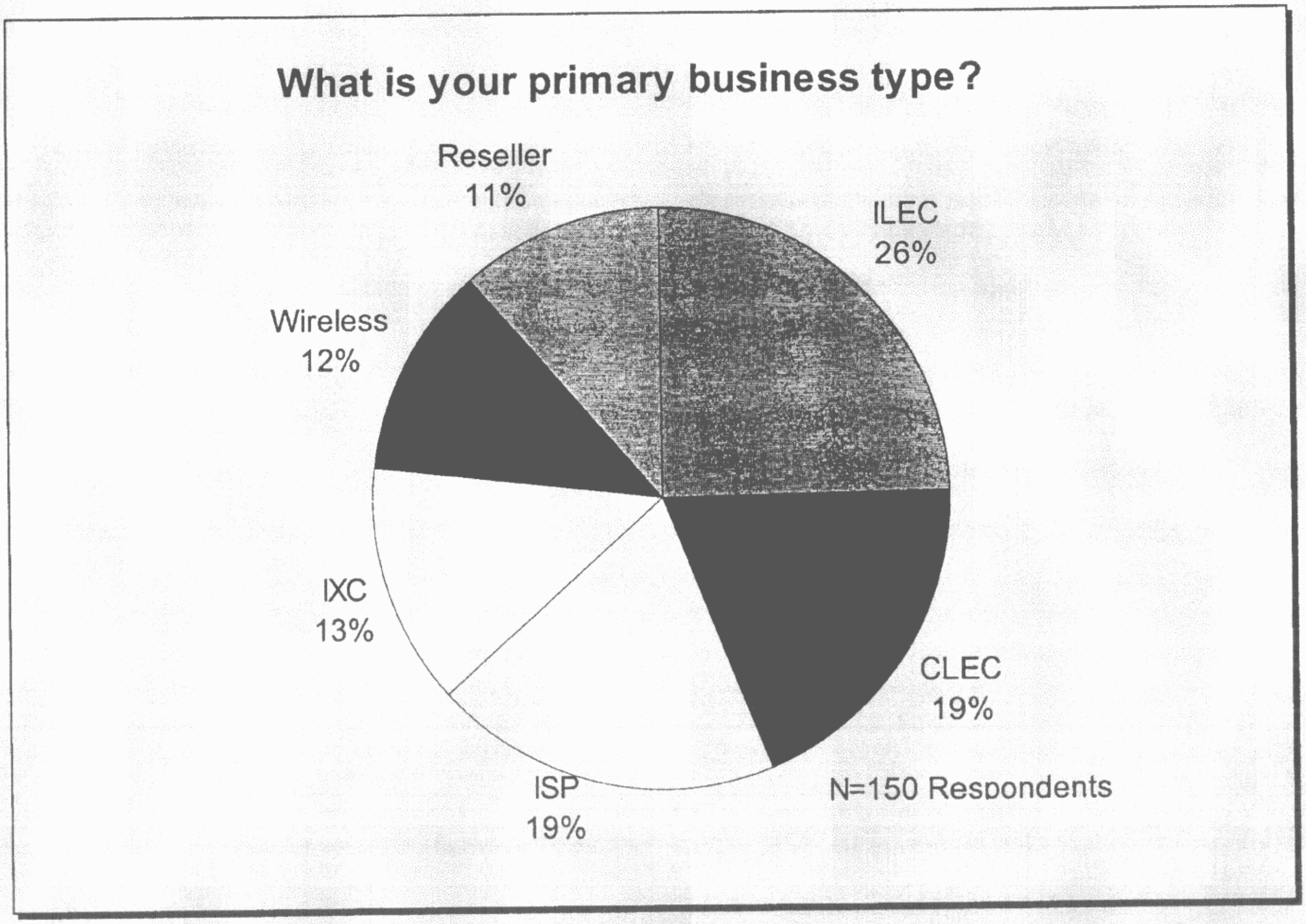


Wholesale CAGR 1998 to 2002 6.6%
Retail CAGR 1998 to 2002 0.5%
Combined CAGR 1998 to 2002 1.8%

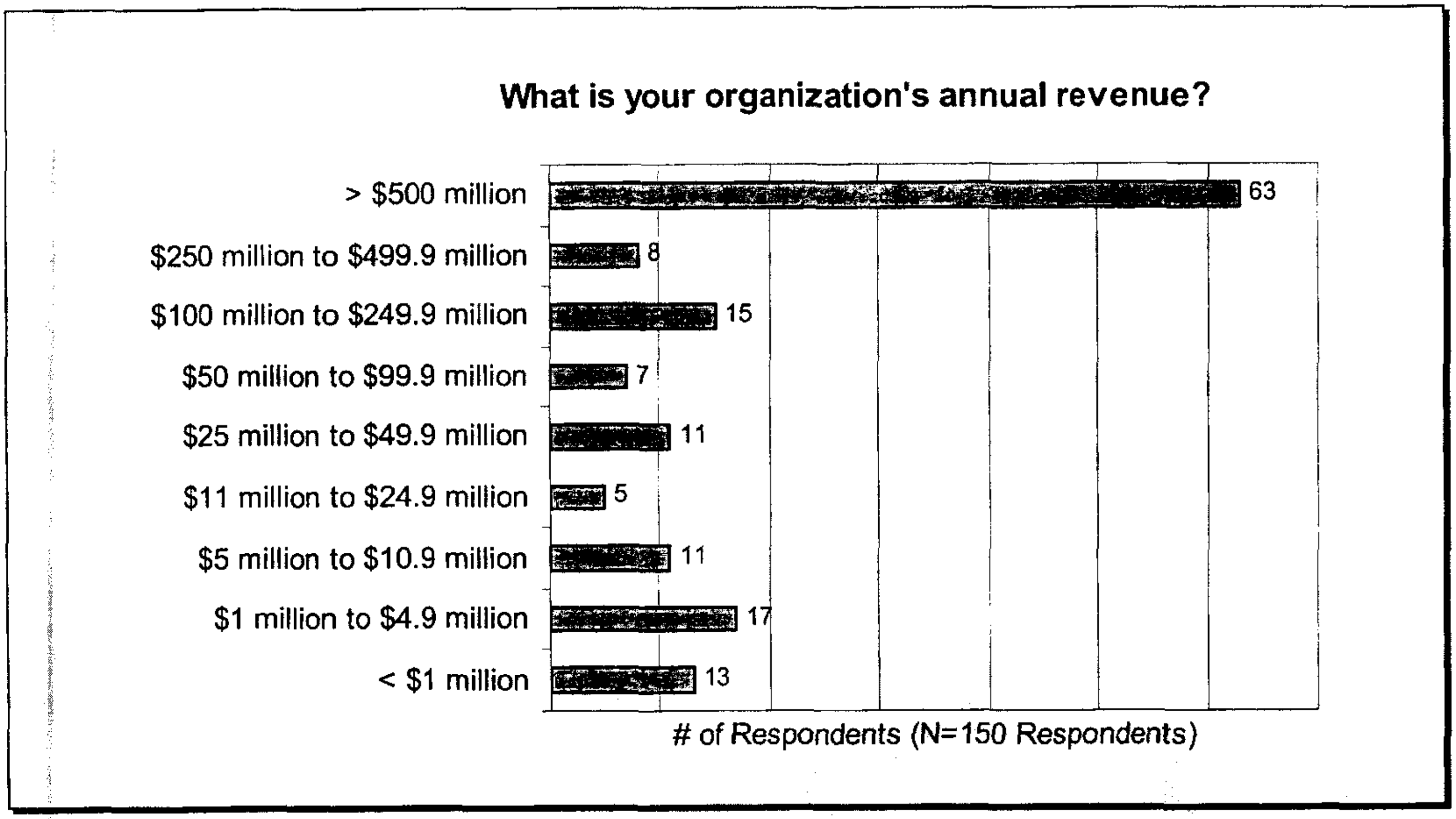
The Yankee Group conducted a survey of wholesale buyers in the U.S. in 3Q 2003

- The survey gauges the state of the U.S. wholesale market from the perspective of significant wholesale customers
- Respondents included 150 buyers of wholesale services from CLECs, ISPs, ILECs, Resellers, Wireless Operators and IXCs.
- The survey focuses on demand and purchases of dark fiber, SONET private line bandwidth, Ethernet, and wavelengths in metro and long haul markets.
- The study captures motives, demand, and buying behavior including:
  - What drives demand for wholesale services?
  - What services customers are buying?
  - Why they are buying?
  - How they are buying ?
  - Who they are buying from?
  - Where carriers are falling short of customer expectations?
  - Which carriers are excelling; which are falling short?
  - To what extent has their purchasing activity/demand changed in the past year?
  - How do they expect their purchasing to change in the coming years?

Survey respondents hail from diverse customer segments



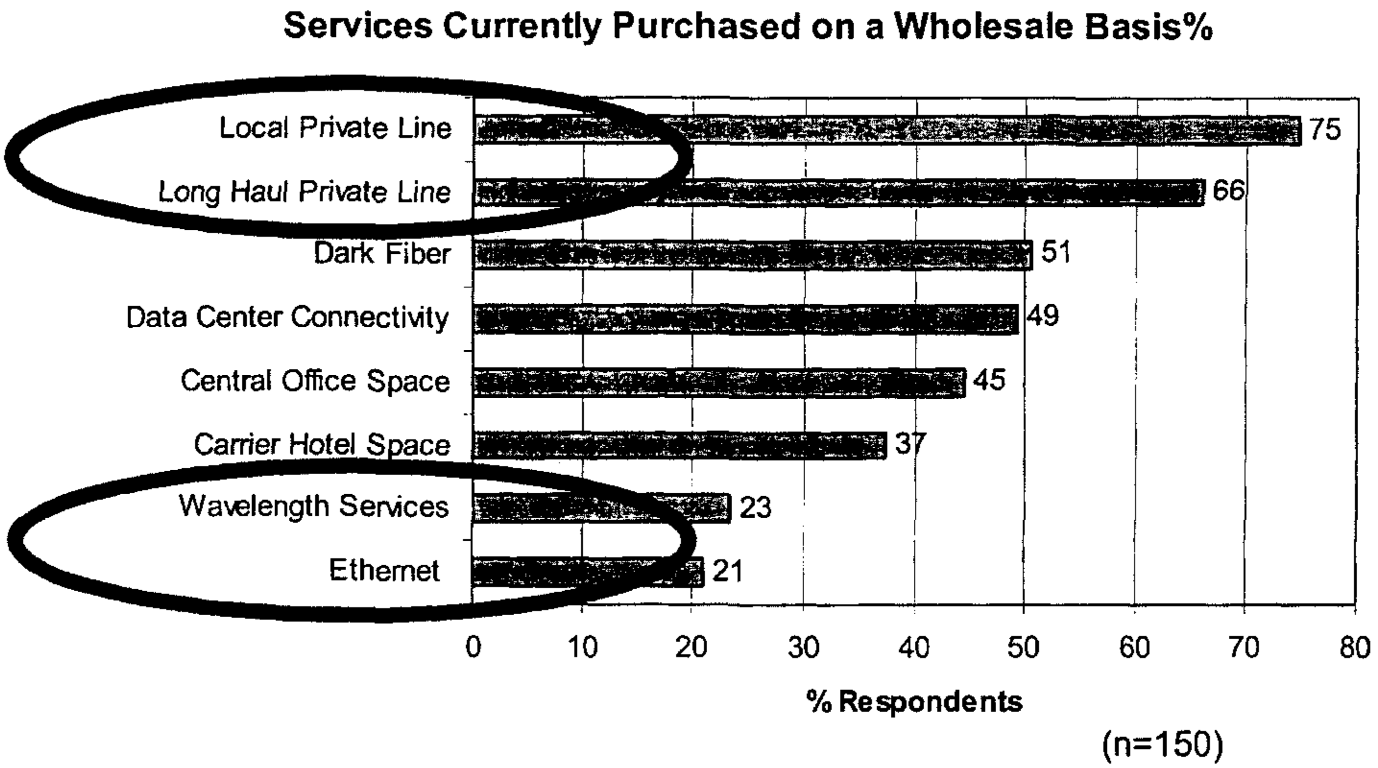
Survey respondents span a variety of company sizes



Agenda

- **Wholesale Communications Services Introduction**
- **Survey Results and Analysis**
- **Supply Side Research**
- **Recommendations for XO Communications**
- **Future Survey Initiatives**

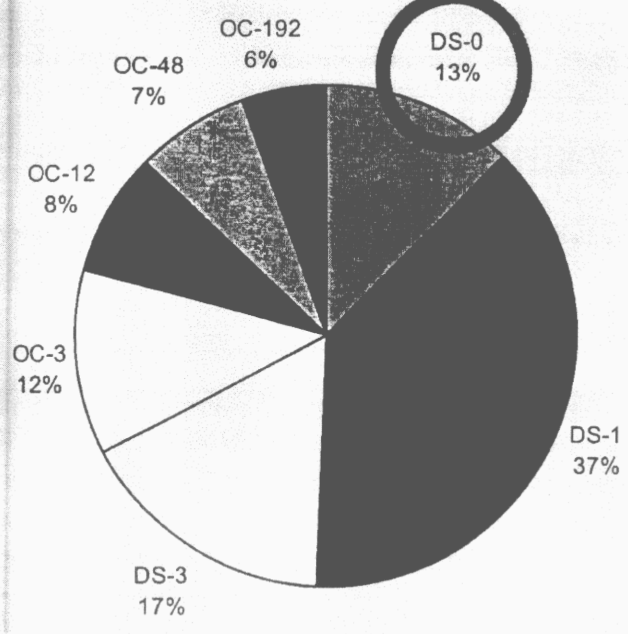
Purchases: Local and long haul private line remain most popular wholesale purchases



Private lines remain the "work horse" of the wholesale sector, while wavelengths and Ethernet remain nascent.

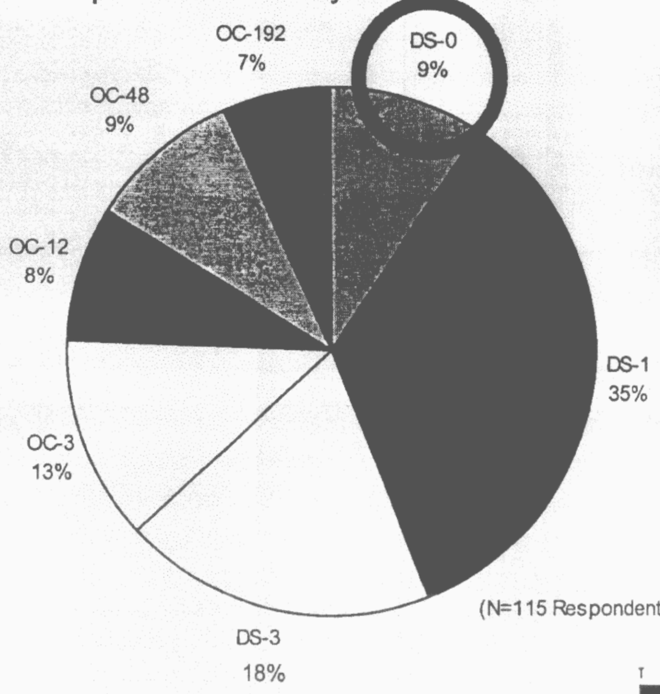
Capacity: Demand by circuit remains relatively consistent from 2002 to 2004

ease estimate a breakdown of you wholesale private line purchases in 2002 by circuit size



(N=116 Respondents)

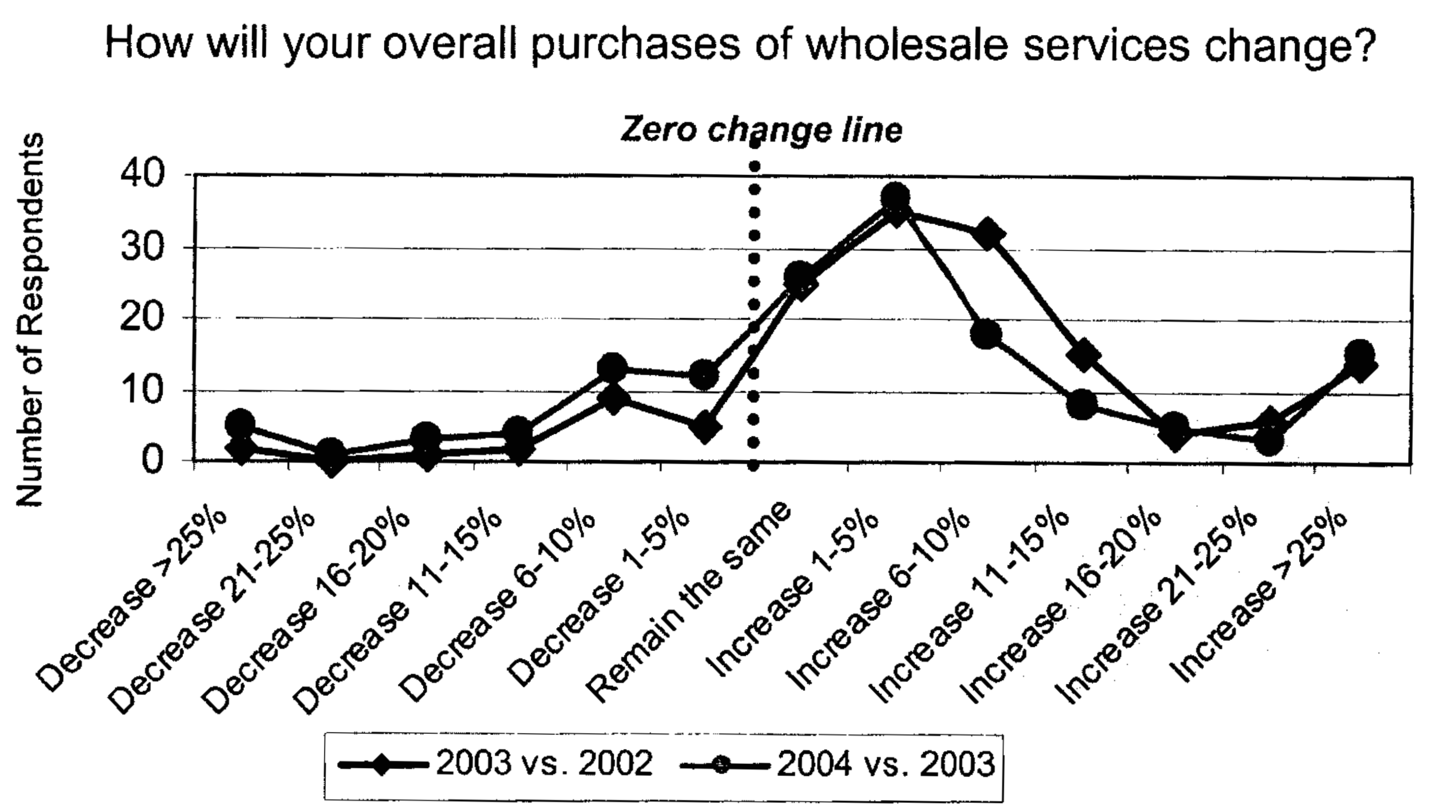
Please estimate a breakdown of you wholesale private line purchases in 2004 by circuit size



(N=115 Respondents

Private line capacity is increasing incrementally, mostly at the expense of DS-0 circuits.

Demand (Introduction): Buyers of wholesale services are cautiously increasing demand



A majority of carriers report increasing their wholesale spending.

Demand: Overall Wholesale and Private Line Growth Rates by Segment and Year

lesale Growth by Carrier Segment	Overall (All Segments)	ILECs	CLECs	IXCs	Resellers	ISPs	Wi
to 2003 growth in overall wholesale purchases	2.8%	1.3%	5.6%	-0.4%	0.1%	5.8%	[illegible]
to 2004 growth in overall wholesale purchases	5.2%	2.9%	7.1%	3.5%	4.6%	3.9%	[illegible]
to 2003 growth in private line wholesale purchases	1.9%	0.8%	2.7%	1.1%	-2.6%	5.9%	[illegible]
to 2004 growth in private line wholesale purchases	4.4%	3.2%	4.0%	4.5%	3.1%	7.3%	[illegible]
ple size in survey		*n= 37*	*n=29*	*n=20*	*n=17*	*n=29*	[illegible]

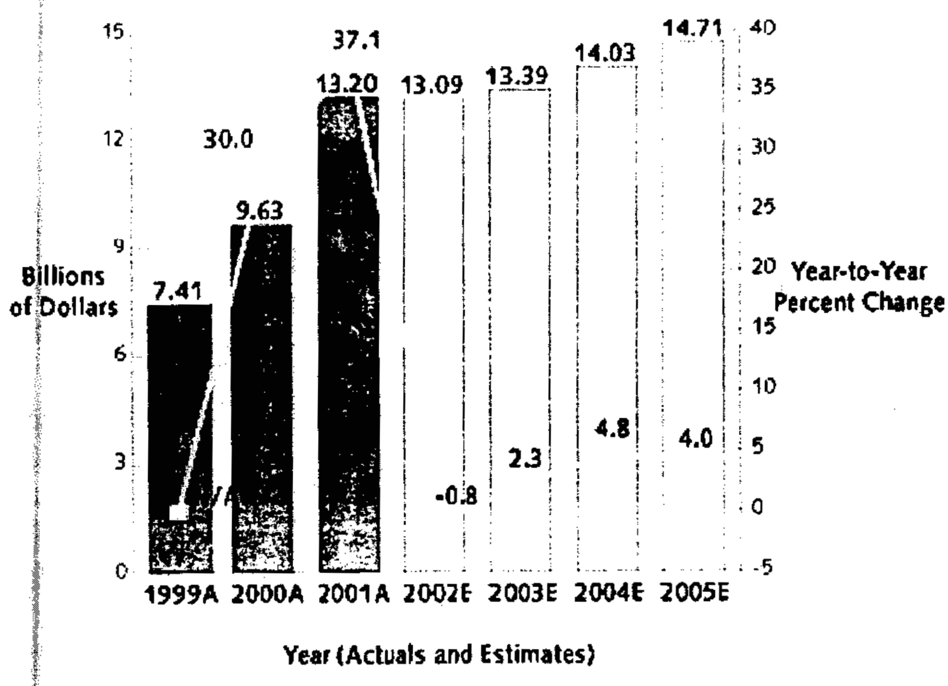
Source: The Yankee Group, Wholesale Communications Strategies, 2003

Key Themes

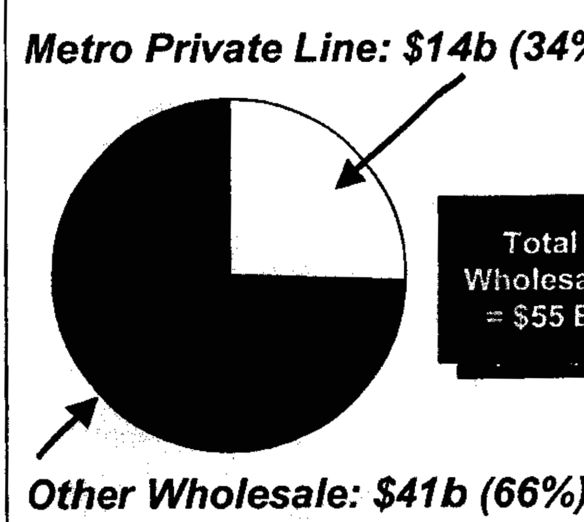
- **Growth in wholesale from 2003-2004 exceeds that of 2002-2003, suggesting a bright outlook for the wholesale sector.**
- **Private line purchasing expected to reach a robust 4.4% growth.**
- **Surviving CLECs and ISPs will account for strong demand, alongside IXCs.**

2004 Wholesale Metro Private Line Forecast

Forecast of Wholesale Metro Private Line Market Revenue, 2002 to 2005



Portion of Wholesale Marke



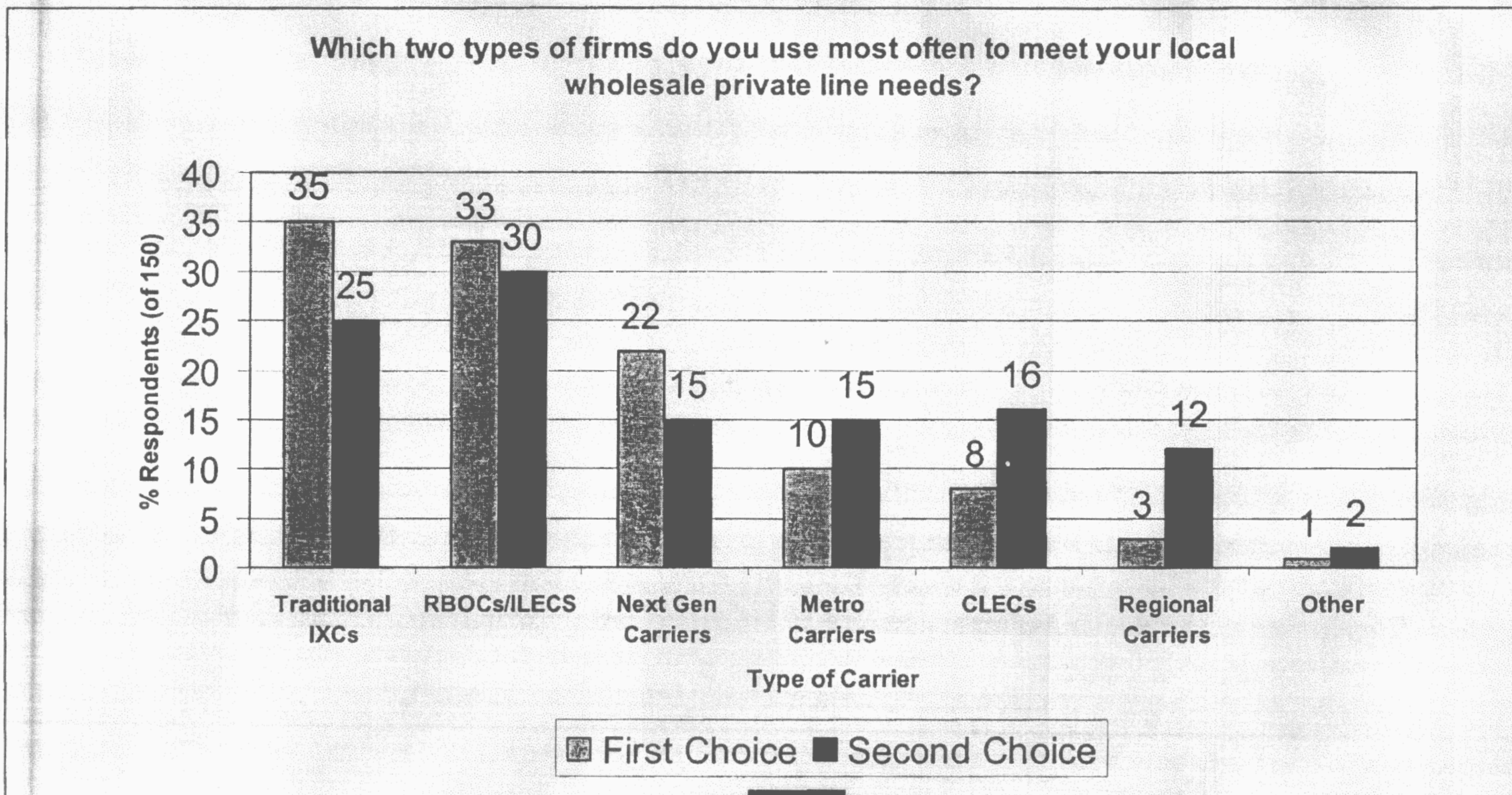
Wholesale Metro Private Line Market Share

BOCs	BellSouth	Qwest	SBC	Verizon
Incumbent-geography market shares	74%	74%	75%	74%
In-region market shares (includes other ILECs)	54%	63%	58%	64%
Addressable metro private line market in-region ($ Billions)	2.584	1.478	5.487	3.615

ther Players	Notes
MCI	Market share ranking #1 outside of RBOCs; approximately 10% across all metros
AT&T	Market share ranking #2 outside of RBOCs; approximately 9% across all metros
Other ILECs	Comprise a large market share in regions where they ar incumbent, usually Tier 2 to 4 areas
CLECs, Carrier's Carriers, Sprint	Very competitive in Tier 1 metros; varying competitiveness in Tier 2 to 4 areas

RBOCs dominate metro private line, as expected. Tier 1 metros experience enormous competition, however.

Buyer Choices:
IXCs and ILECs lead local wholesale private line market



Buyers tell us they'd rather not buy from the RBOC, but that competitors lag in availability.

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September 22, 2005

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 – 12th Street, SW
Washington, DC 20554

Re: **SBC/AT&T Merger Application - WC Docket No. 05-65; Verizon/MCI Merger Application - WC Docket No. 05-75**

Dear Ms. Dortch:

In previous comments and ex parte submissions,[1] BridgeCom International, Broadview Networks, Conversent Communications, Eschelon Telecom, NuVox Communications, TDS Metrocom, XO Communications, and Xspedius Communications (the "Joint Commenters") have supplied the Commission with evidence regarding the

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[1] *See, In the Matter of SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Petition to Deny of Cbeyond Communications, Conversent Communications, Eschelon Telecom, NuVox Communications, TDS Metrocom, XO Communications and Xspedius Communications, DA 05-656, WC Docket No. 05-65 (filed Apr. 25, 2005); *In the Matter of Verizon Communications, Inc. and MCI Corp. Applications for Approval of Transfer of Control*, Petition to Deny of Cbeyond Communications, Conversent Communications, Eschelon Telecom, NuVox Communications, TDS Metrocom, and XO Communications, DA 05-762, WC Docket No. 05-75, (filed May 9, 2005); Ex Parte Presentations of Simon Wilkie, Economist, WC Dockets Nos. 05-65 and 05-75, May 9, 2005, June 15, 2005, and Aug. 1, 2005. Ex Parte Letters from Brad E. Mutschelknaus, Kelley Drye & Warren LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dockets No. 05-65 and 05-75, June 6, 2005, July 14, 2005, and Aug. 31, 2005.

development and functioning of the local wholesale market for loops to end user locations and transport within metropolitan areas – a market that is taking on growing importance as Unbundled Network Elements ("UNEs") are delisted and Incumbent Local Exchange Carrier ("ILEC") special access rates continue to increase far in excess of cost, producing supranormal profits.[2] Further, the Joint Commenters have shown that AT&T and MCI – the two largest local competitors – play the critical, leading role in that market, causing prices to decrease significantly.[3] The rates these two companies offer for local wholesale circuits are on average approximately 50% below the special access rate offered by SBC and Verizon, and, just as importantly, even if these two companies do not win the contract, their very presence causes rates offered by other providers to decrease to at least these levels. Further, it is clear that post-merger, other competitors would not "expand or enter with sufficient strength, likelihood and timeliness to render unprofitable an attempted exercise of market power resulting from the merger."[4] As a result, should the proposed SBC/AT&T and Verizon/MCI mergers be consummated – and AT&T and MCI no longer provide wholesale services – a working, viable wholesale market will be seriously harmed, and wholesale and retail business customers will suffer greatly. It is for that reason that the Commission should reject these proposed mergers. As proposed, they clearly do not serve the public interest, convenience and necessity. It is important to note that such a determination by the Commission is the norm for proposed mergers by Regional Bell Operating Companies ("RBOC"). Since the 1996 Act, every proposed acquisition by a RBOC of another major carrier has been found to be unlawful due to their likely anti-competitive effects.[5]

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2 *See, e.g.*, Economics and Technology, Inc., *Competition in Access Markets: Reality or Illusion*, Prepared for the August, 2004 Ad Hoc Telecommunications Users Committee, WC Docket Nos. 05-65 and 05-75 at 27-40. *See also*, Ex Parte Letter from Patrick H. Merrick, Esq, Director-Regulatory Affairs, AT&T Federal Government Affairs to Marlene H. Dortch, Secretary, Federal Communications Commission, RM No. 10593 (May 1, 2003) ("there is indisputable proof that the large ILECs and particularly the Bells, retain market power in the provision of special access services, the ILECs are abusing that [market] power with unjust and unreasonable rates…"). *See also*, *In the Matter of Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Comments of MCI, Inc., WC Docket No. 04-313 and CC Docket No. 01-338, 154-62 (Oct. 4 ,2004).

3 AT&T's and MCI's competitive presence is comprised of much more than the local network facilities of the two companies. Because of their substantial size, they are able to negotiate substantial term and volume discounts for special access circuits from SBC and Verizon. They also have enormous customer bases from their domestic and international long distance businesses that they can use to enter local markets, and, of course, since both are Fortune 100 companies, they have significant financial resources.

4 *Applications of NYNEX Corp. and Bell Atlantic Corp. For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 19985, ¶11 (1997) ("*NYNEX/Bell Atlantic Merger Order*").

5 *See generally*, *GTE/BellAtlantic Merger Order*, 15 FCC Rcd 14032 (2000); *SBC/Ameritech Merger Order*, 14 FCC Rcd 14712 (1999); *NYNEX/Bell Atlantic*

Despite a determination that the proposed mergers are not in the public interest, the Commission may decide to approve the transactions by using its authority pursuant to Section 214(c) of the Act to impose transaction-specific terms and conditions to remedy the anti-competitive effects of the proposed mergers. That was the approach used by the Commission in all prior RBOC mergers. If the Commission decides to once again use this approach, the Joint Commenters believe the following remedies taken together are vital, although not sufficient, to alleviate the competitive harm to the local wholesale market.

1. ENSURE RATES, TERMS, AND CONDITIONS FOR SPECIAL ACCESS CIRCUITS REFLECT PRE-MERGER MARKET CONDITIONS

As stated above, because of AT&T's and MCI's competitive presence, competitive providers are able to access loop and transport circuits at rates far below SBC's and Verizon's special access rates and upon terms and conditions that reflect competitive conditions. To ensure these market rates, terms, and conditions continue post-mergers, it is essential that the Commission adopt the following pricing and performance remedy.

> For a five year period from the date the mergers are consummated (with a possible five year extension), providers of telecommunications services should have a right to choose to obtain special access circuits from SBC and Verizon at rates, terms, and conditions either (1) as set by the Commission based on at a re-initialized rate of return of 11.25% calculated from 1999, or (2) as determined by commercial negotiations with a requirement that "baseball arbitration" be used if the negotiations fail.[6]

Merger Order, 12 FCC Rcd 19985 (1997); *Cingular/AT&T Wireless Merger Order*, 19 FCC Rcd 21522 (2004).

6 *See, In the Matter of General Motors Corporation and Hughes Electronics Corporation, Transferors And The News Corporation Limited, Transferee, For Authority to Transfer Control*, Memorandum Opinion and Order, MB Docket No. 03-124, Appendices B and C (rel. Jan. 14, 2004) (The Commission employed the remedy of commercial negotiations with baseball arbitration). See, also, *GTE CORPORATION, Transferor and BELL ATLANTIC CORPORATION, Transferee For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, FCC 00-221, 15 FCC Rcd 14032 (June 16, 2000 Appendix D(VI), ¶19(b), "To the extent that Bell Atlantic/GTE and CLECs cannot reach agreement regarding the scope of the collaborative process, they may be resolved through arbitration process set forth in Paragraph 21."

Specifics of Access to Special Access Circuits at Reinitialized Rates:
The recalculated rate of return will be flowed through proportionately to rates for all services, and these rates will be maintained for the entire five year period. These rates will be available regardless of whether the provider purchases other services or facilities of SBC and Verizon, and the requesting provider will be able to terminate service at any time without incurring a penalty. Finally, to ensure competitors have non-discriminatory access, if the merging parties offer better rates or service arrangements to any affiliated entities, requesting providers may access those rates and arrangements.[7]

Specifics of Access to Special Access Circuits via Commercial Negotiations/Baseball Arbitration:
The arbitration would be conducted by the American Arbitration Association with strict time limits to reflect the need to meet normal commercial conditions. The final offers from both parties would be in the form of a contract for access services (including prices, terms and conditions, service level agreements, and performance remedies) for a minimum 1 year and maximum 5 year period with automatic renewals.[8] The arbitrator would choose the final offer that most closely approximates the lowest (market) rates existing prior to the proposed mergers in the SBC and Verizon regions as offered by AT&T, MCI, or any other provider. If the telecommunications provider seeks in its final offer to continue a pre-merger agreement with AT&T or MCI for the provision of local wholesale services, that agreement shall automatically be adopted by the arbitrator.

7 As an alternative to replacing the existing special access tariffs, the Joint Commenters observe that neither SBC nor Verizon has yet fulfilled its statutory obligation to make a set of unbundled transport and loop UNEs available pursuant to Section 271 of the Act. *See*, 47 U.S.C. § 271(c)(2)(B)(iv) -(v). The Commission could require either: (1) SBC and Verizon to calculate what the rates for special access mileage and channel terminations would be if they were re-priced to provide a 11.25% rate of return and then order those rates to be offered regionwide as Section 271 UNEs; or, (2) SBC and Verizon to make a set of unbundled loop and transport Section 271 UNEs available region-wide at rates established at 115% of the existing Section 251 UNE rates, an approach the Commission found to be appropriate as a transitional rate mechanism and adopted as rules in the Triennial Review Remand Order. *See*, for UNE loops, 47 C.F.R. §§ 51.319 (a)(4)(iii) and (a)(5)(iii), and for UNE transport 47 C.F.R. §§ 51.319 (e)(2)(ii)(C), (e)(2)(iii)(D), and (e)(2)(iv)(B).

8 If, as part of its offer, the telecommunications provider seeks to convert UNE facilities to special access circuits, it shall be permitted to continue to use the UNE ordering platform.

2. ENSURE UNE AVAILABILITY AND PRICING REFLECT HARM CAUSED BY AT&T'S AND MCI'S EXIT FROM THE MARKET

Currently, providers of competitive services can order critical wholesale inputs (loops and transport) either as special access or as UNEs. Most competitive local service providers order these inputs as UNEs, particularly those serving small and medium sized businesses. To provide relief that is equally available to all competitive providers and to ensure competition in the provision of local services equivalent to pre-merger levels of competition, UNE access to these inputs must be maintained for a period of time comparable to the relief afforded with respect to special access.

A. Cap UNE Pricing

Prices for key UNE inputs (transport, high capacity loop circuits, and UNE-L loops) have been set after extensive state level proceedings. As with competitive wholesale services available prior to consummation of the proposed mergers, UNE prices for these inputs are substantially below special access prices. In addition, since the 1996 Act, AT&T and MCI have played the leading role in the lengthy and resource intensive state rate proceedings to establish rates for UNEs and in negotiating and arbitrating interconnection agreements ("ICAs"). If the mergers are consummated, the discipline previously imposed in the UNE rate setting process by the participation of AT&T and MCI will be lost. Remaining competitive providers should not be forced to relitigate UNE cost cases. They require stability in the regulatory environment to provide marketplace pricing discipline to "replace" the competition lost as a result of these mergers. Therefore, to remedy the demonstrable harm from the mergers, the Commission should cap UNE prices in the SBC and Verizon regions for a period of five years. In addition, parties who order loops (including high capacity and UNE-L loops) and transport elements via UNE processes, should have the continuing right to order via these processes, but should have the right to "opt out" of UNE prices and avail themselves of the commercial negotiation/arbitration process described above for special access services.

B. Freeze on Further UNE Delisting

The Commission has recently completed extensive proceedings that have established a going forward framework for UNE availability. This framework is critical for competitive providers to access remaining UNE inputs on a stable and predictable basis, and therefore to replicate competitive conditions prior to the mergers. Because AT&T and MCI dominated the competitive presence in local markets, if the proposed mergers are consummated, retail and wholesale business customers will suffer greatly and will be seeking to replicate their competitive presence as